

UNPUBLISHED

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

UNITED STATES OF AMERICA,
Plaintiff-Appellee.

v.

No. 97-6822

TERRANCE ANDRE SMITH,
Defendant-Appellant.

Appeal from the United States District Court
for the Eastern District of Virginia, at Norfolk.
Robert G. Doumar, Senior District Judge.
(CR-93-88, CA-97-390-2)

Submitted: July 21, 1998

Decided: August 7, 1998

Before WIDENER, MURNAGHAN, and HAMILTON,
Circuit Judges.

Vacated and remanded by unpublished per curiam opinion.

COUNSEL

Terrance Andre Smith, Appellant Pro Se. Robert Joseph Seidel, Jr.,
Assistant United States Attorney, Norfolk, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit. See
Local Rule 36(c).

OPINION

PER CURIAM:

Appellant seeks to appeal the district court's order denying relief on his motion filed under 28 U.S.C.A. § 2255 (West 1994 & Supp. 1998). Appellant's conviction became final on October 14, 1993. On April 16, 1997, Appellant filed a § 2255 motion. The district court denied relief because Appellant filed his motion outside the one-year limitation period imposed by 28 U.S.C.A. § 2244(d) (West 1994 & Supp. 1998). Pursuant to our recent decision in Brown v. Angelone, ___ F.3d ___, Nos. 96-7173, 96-7208, 1998 WL 389030 (4th Cir. July 14, 1998), Appellant had until April 23, 1997, in which to file a timely motion. Accordingly, because Appellant filed his § 2255 motion before April 23, 1997, we vacate the district court's order and remand this case for consideration on the merits. We grant a certificate of appealability on this issue but dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

VACATED AND REMANDED